

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

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IN THE MATTER OF THE  
INSPECTION OF:

The work establishment known as  
**Foundation Foods Group, Inc.**,  
located at **2076 Memorial Park Drive**,  
**Gainesville, Georgia**

Case No. 2:21-MC-16

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**Declaration of Robin Bennett**

I, ROBIN S. BENNETT, am over 18 years of age and legally competent to make this Declaration. I hereby state:

1. I am a senior Compliance Safety and Health Officer (“CSHO”) employed by the Atlanta-East Area Office, Occupational Safety and Health Administration (“OSHA”), United States Department of Labor. In that capacity, I conduct investigations to determine if an employer is in compliance with the Occupational Safety and Health Act (“the Act”), 29 U.S.C. § 651 *et seq.*

2. This Declaration is submitted in support of the OSHA Acting Area Director’s application for issuance of an administrative inspection warrant for a limited safety inspection, pursuant to Section 8 of the Act, of the work establishment known as Foundation Foods Group, Inc. (“Foundation Foods”), located at 2076 Memorial Park Drive, Gainesville, Georgia (“the Plant”). The

statements in this Declaration are based on my personal knowledge and on reports from other CSHOs who are part of our investigatory team.

3. The Plant processes raw poultry into various marinated or breaded poultry products that are cooked and then frozen. Machinery within the Plant includes: blenders, mixers, ovens, grills and freezers. Chemicals known to be in use at the Plant include liquid nitrogen and ammonia.

4. On or about 10:15 a.m. on Thursday, January 28, 2021, an Immersion/Spiral freezer at the Plant malfunctioned and leaked liquid nitrogen, killing six people and injuring 12 others. OSHA Atlanta-East Area Office sent me and several other CSHOs to initiate an unprogrammed accident-related inspection in response to this catastrophe. This separate accident-related inspection is ongoing.

5. On Thursday, March 11, 2021, I was assigned to review an oral complaint from a Foundation Foods employee representative, alleging that at approximately 10:00 a.m. that morning, employees had been removed from their work areas in the Plant due to the strong smell of ammonia.

6. I spoke with Foundation Food's attorney Dane Steffenson early in the afternoon on March 11, 2021 in efforts to get more information on the "leak." He told me Foundation Foods removed its employees so a third-party ammonia refrigeration company could verify a leak. Mr. Steffenson indicated it was "not a

concern.” Mr. Steffenson did indicate, however, that Foundation Foods was considering replacing “some” equipment that was more than 25 years old and that the equipment had been taken off line as it wasn’t being used anyway. He indicated the ammonia smell “could’ve” been compressors, but he wasn’t sure.

7. The event was also reported by media. See, for example: <https://abcnews.go.com/US/wireStory/firefighters-called-plant-earlier-gas-leak-killed-76420839>. Foundation Foods issued a statement to the media saying: “Hall County firefighters toured the facility later today and confirmed, there were no actionable levels of ammonia.”

8. I spoke with a Hall County Fire Department representative and learned that the Fire Department’s entry to the Plant was at approximately 4:00 p.m., many hours after employees reported the strong smell of ammonia.

9. Attorney Dane Steffenson stated that Foundation Foods took the ammonia refrigeration equipment off line after a strong ammonia smell had been detected in the morning. Windows and doors of the Plant were also opened on March 11, 2021, to dissipate the smell of ammonia. Therefore, the air sampling readings Hall County Fire Department took in the late afternoon may or may not have accurately reflected the ammonia levels at the Plant in the morning when employees had been present.

9. I conferred with my supervisors at the Atlanta-East Area Office, who directed CSHO Xavier Cruz and me to make entry to the Foundation Foods Plant to investigate the hazards alleged in the complaint and media report.

10. At 12:12 p.m. on Friday, March 12, 2021, CSHO Cruz and I held an opening conference at the Plant with the following Foundation Food managers: Ryan Cook, Craig Puntervold, and BJ Svajgl; attorney Dane Steffenson was on the phone for the opening conference. I explained in detail the inspection proceedings and ramifications of any findings OSHA had during the course of the inspection. Mr. Steffenson explained the company had no indication any employee had been in danger, and had removed “some” employees from “the area” to a breakroom in an effort to be “sensitive to employees concerns” until confirmation could be made if an ammonia leak had occurred. He claimed that: “For employee’s comfort they were removed from the area and taken to the breakroom – employees did not leave the facility”.

11. I asked Mr. Steffenson what equipment containing ammonia had caused the smell and he refused to provide the information. Mr. Steffenson indicated OSHA needed to provide the area of concern (where the alleged leak occurred) and if OSHA could not provide that information, there was not sufficient information/jurisdiction to conduct an OSHA inspection. Mr. Steffenson indicated he was willing to provide information on alarms/readings that were

taken by a third-party refrigeration company (without indication of where or when the alarms or readings were taken) and by Hall County Fire Department (who took air sampling readings 6-8 hours after the initial report of the ammonia leak), but aside from that he was denying entry based off the formal complaint of an “Ammonia Leak” at Plant 4. He said the allegations of the complaint were “too vague.” Instead, he offered to share Foundation Foods’ investigation and findings. To date, Foundation Foods has not provided OSHA with these air sampling readings or findings from the internal investigation.

12. I informed Mr. Steffenson that it was not his nor Foundation Foods’ job to perform the OSHA investigation, which was why OSHA was on site. He continued to deny entry. CSHO Cruz and I then exited the site at approximately 1:00 p.m.

13. On March 12, 2021, at approximately 3:45 p.m., an employee representative submitted a formal complaint to OSHA (“the First Complaint”). A copy of this First Complaint, redacted to protect the identity of the informer/complainant, is attached.

14. In relevant part, the First Complaint alleges that:

- a. On Tuesday March 9, 2021 and Wednesday March 10, 2021, employees reported smelling ammonia as soon as they entered the Plant.

- b. On Thursday, March 11, 2021, around 9:45 a.m., the smell of ammonia was much stronger than on the previous days.
- c. Workers complained to supervisors that the ammonia smell was very strong.
- d. Supervisor instructed employees to move to the break room while management fixed the issue. The door to the break room kept opening and closing and the smell was very strong.
- e. A supervisor stated that workers could go outside if the smell was too strong. The workers returned to the breakroom. However, because the smell was strong – they went outside as well.
- f. After about 30 minutes, supervisors returned and instructed the workers to return to work. Workers complained that there was still a strong smell within the facility. Management then told workers they could leave. Workers left the facility around 10:30 a.m.
- g. The ammonia leak occurred at or around Line 5, and affected workers throughout the entire Plant.
- h. No alarm was triggered by the ammonia leak, just as the alarm was not triggered by the nitrogen leak on January 28, 2021, until after workers had evacuated the Plant.

- i. Workers are exposed to noise levels about 85 dba and do not receive annual hearing exams.

15. On March 15, 2021, OSHA CSHO Maria Martinez interviewed a Foundation Foods employee who stated that s/he had been working at the Plant on Line 3 on March 11, 2021. The identity of this employee is protected by the government informer's privilege. This employee reported that the smell of ammonia was very strong that morning, starting at about 9:00 a.m., and that it caused him/her to feel unwell. This employee reported that his/her head, stomach, and eyes hurt as a result of the ammonia. This employee also reported that Line 1, where chicken is cooked, has insufficient ventilation to address the smoke that the cooking creates. S/he stated that there is no emergency exit in the back part of the Plant where Line 1 is located.

16. On March 22, 2021, OSHA CSHO Sebastian Ortiz interviewed another Foundation Foods employee who had been in the Plant working on Line 2 the morning of March 11, 2021. The identity of this employee is protected by the government informer's privilege. This employee reported that the ammonia smell was so strong that morning that it burned his/her eyes and nose. This employee reported that the ammonia caused his/her head to hurt and that s/he had chest pain. This employee left the Plant when his/her supervisor gave him/her the option to stay or leave. This employee did not return to work the following day

because his/her head was still hurting. This employee also reported that when s/he works on production Line 1, s/he wears earplugs and, if s/he doesn't wear earplugs, s/he has to should to be heard by others above the noise of the machinery.

17. OSHA also received a complaint on March 26, 2021, from a Foundation Foods employee representative ("Second Complaint"). This Second Complaint, a copy of which is attached, alleges conditions at the Plant constitute an imminent danger, as meant by 29 C.F.R. § 1908.2, and exhorts OSHA to act under its statutory authority under 29 U.S.C. § 664(a) to address this danger. Specifically, the Second Complaint alleges:

- a. On the morning of March 11, 2018, employees at the Plant detected a strong smell of ammonia. Thereafter, employees experienced symptoms such as burning eyes, sore throat, nausea and headaches. Several workers had to go home because of the ammonia leak.
- b. Emergency alarms did not go off at the Plant during either the leak of nitrogen or the leak of ammonia, which occurred on January 28, 2021 and March 11, 2021, respectively.
- c. An effective emergency action plan has not been implemented in the facility. Employees have not received training on evacuation in case of an emergency, such as in the event of a toxic release of gas.



- d. The facility has only one emergency exit available for 130 employees for use in case of an emergency. A second emergency exit door is not accessible to the workers and remains locked. Workers need a key to access this door.
- e. There is inadequate ventilation on Line 1, where heated cooking oil results in excessive smoke where employees work. As a result, employees are experiencing eye pain, tearing, and blurred vision, as well as adverse respiratory effects. Personal protective equipment is not provided for employees who are exposed to the smoke.
- f. Foundation Foods has not conducted a process safety analysis for the use of ammonia.

18. On March 29, 2021, I again attempted entry at the Foundation Foods Plant, this time referring to the allegations in the Second Complaint. Foundation Foods, through another one of its counsel Larry Stine, again denied entry.

19. OSHA is unable to investigate the complaint items or to determine whether an “imminent danger” exists at the Plant because FFG has denied entry.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on:\_\_\_\_\_

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Robin S. Bennett  
Compliance Safety and Health Officer  
Occupational Safety and Health  
Administration, United States  
Department of Labor